

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HEATHER N. W.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 3:23-cv-05512-GJL

ORDER ON PLAINTIFF'S  
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule (MJR) 13. *See also* Consent to Proceed Before a United States Magistrate Judge, Dkt. 2. This matter has been fully briefed. *See* Dkts. 14, 23, 29.

After considering and reviewing the record, the Court concludes: (1) the Administrative Law Judge (“ALJ”) harmfully erred by rejecting the opinion of Dr. Kimberly Wheeler; and (2) a remand for further proceedings is appropriate. The Court accordingly **REVERSES** the Commissioner’s final decision and **REMANDS** the case for further proceedings.

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## I. PROCEDURAL HISTORY

Plaintiff's application for Supplemental Security Income ("SSI") benefits pursuant to 42 U.S.C. § 1382(a) (Title XVI) was denied initially and following reconsideration. Administrative Record ("AR") 454, 461. Plaintiff's hearing was held before the ALJ on March 1, 2022. AR 349–89.

On March 21, 2022, the ALJ issued a written decision in which the ALJ concluded that Plaintiff was not disabled pursuant to the Social Security Act. AR 191–226. On April 18, 2023, the Appeals Council denied Plaintiff's request for review, making the written decision by the ALJ the final agency decision subject to judicial review. AR 1. On June 8, 2023, Plaintiff filed a Complaint in this Court seeking judicial review of the ALJ's written decision. Dkt. 4. Defendant filed the sealed AR on August 7, 2023. Dkt. 8.

## II. BACKGROUND

Plaintiff was born in 1987 and was 32 years old on the alleged date of disability onset of March 1, 2019. AR 215, 630. Plaintiff has a high school education and most recently worked as a sales associate in 2012. AR 215, 662. According to the ALJ, Plaintiff suffers from, at a minimum, the severe impairments of degenerative disc disease, scoliosis, radiculopathy, and failed back syndrome; right wrist degenerative changes; left thumb trigger finger; bilateral carpal tunnel syndrome; major depressive disorder; bipolar disorder; generalized anxiety disorder; attention deficit hyperactivity disorder; binge eating disorder; post-traumatic stress disorder; and obesity. post myocardial infarction; and stent placement. AR 198. However, the ALJ found Plaintiff was not disabled because she had the following residual functional capacity ("RFC"):

to perform light work as defined in 20 CFR 416.967(b) except she can lift, carry, push, and pull 20 pounds occasionally and 10 pounds frequently. She can stand and/or walk (with normal breaks) for a total of 4 hours in an 8- hour workday. She can sit (with normal breaks) for a total of about 6 hours in an 8-hour workday. She

1 can occasionally climb ramps, stairs, ladders, ropes, and scaffolds. She can  
2 frequently balance, occasionally stoop and crawl, and can frequently kneel and  
3 crouch. She can frequently handle and perform fine finger manipulation with the  
4 bilateral upper extremities. She can tolerate occasional concentrated exposure to  
5 extreme cold, vibration, and hazards such as proximity to moving mechanical parts  
6 and working in high, exposed places. She can understand, remember, and carry out  
7 rote, routine instructions that require occasional independent judgment or decision-  
8 making for the two-hour segments that make up an eight-hour workday with normal  
9 breaks. She cannot carry out complex instructions. She can maintain concentration,  
10 persistence, and pace sufficient for work with a variable pace or end-of-day  
11 production goals, but not for fast-paced work such as work at a moving conveyor  
12 belt. She can tolerate occasional work-related interaction with coworkers and  
13 supervisors in a task or object-oriented setting as opposed to a collaborative or  
14 service-oriented setting. She should have no work-related interaction with the  
15 public. She cannot set goals independently but can understand and follow  
16 employer-set goals.

17 AR 202–203.

### 18 **III. DISCUSSION**

19 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of  
20 social security benefits if the ALJ’s findings are based on legal error or not supported by  
21 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th  
22 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

23 In Plaintiff’s Opening Brief, Plaintiff raises the following issues: (1) whether the ALJ  
24 properly evaluated the medical opinions; (2) whether the ALJ properly evaluated Plaintiff’s  
25 testimony; and (3) whether the matter should be remanded for an immediate award of benefits.  
26 Dkt. 14 at 1.

#### 27 **A. Assessment of Medical Opinions**

28 Plaintiff assigns error to the ALJ’s evaluation of opinions from Dr. Kimberly Wheeler,  
29 Ph.D., and Ms. Gytha Nydam, MHC. Dkt. 14 at 9–12; Dkt. 29 at 7–9.

1 For applications filed on or after March 27, 2017, the Administration has directed ALJs  
2 to not defer to medical opinions from treating or examining sources. *See* 20 C.F.R. § 416.927(c).  
3 Instead, they must evaluate the persuasiveness of all medical opinions by analyzing their  
4 “supportability” and “consistency,” as well as other appropriate factors. 20 C.F.R. § 416.920c(a).  
5 The Ninth Circuit has concluded that the “revised social security regulations are clearly  
6 irreconcilable with [its] caselaw according special deference to the opinions of treating and  
7 examining physicians on account of their relationship with the claimant.” *Woods v. Kijakazi*, 32  
8 F.4th 785, 792 (9th Cir. 2022). Therefore, for applications filed after March 27, 2017, “an ALJ’s  
9 decision, including the decision to discredit any medical opinion, must simply be supported by  
10 substantial evidence.” *Id.* at 787.

11 **1. The March 2019 Opinion of Dr. Kimberly Wheeler**

12 On March 19, 2019, Dr. Kimberly Wheeler completed a psychological evaluation of  
13 Plaintiff on behalf of the Washington State Department of Social & Health Services. AR 1255–  
14 59. Plaintiff reported a history of physical and mental health troubles, focusing on her struggles  
15 with disordered eating and caring for her autistic 9-year-old son who has “severe behavioral  
16 dyscontrol [sic] issues, with rage.” AR 1255. Dr. Wheeler observed that Plaintiff “sobbed often”  
17 and had “lots of guilt,” exhibiting a deeply dysphoric mood and friable affect. AR 1258–59. Dr.  
18 Wheeler also found Plaintiff’s concentration was “too fractured by anxiety and depression” and  
19 her insight and judgment were adequate “to a fault” as she was “aware of what her issues are,  
20 [and] punishes herself for them.” AR 1259.

21 Dr. Wheeler concluded that Plaintiff had severe limitations on her ability to adapt to  
22 changes in a routine work setting and complete a normal workday and work week without  
23 interruptions from psychologically based symptoms. AR 1257. Dr. Wheeler also found marked  
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1 limitations on Plaintiff's ability to perform activities within a schedule, maintain regular  
2 attendance, and be punctual within customary tolerances without special supervision and set  
3 realistic goals and plan independently, along with moderate impairments in five other categories.

4 *Id.* She recommended therapy for Plaintiff but noted that "restoration of employability within  
5 even two years is not a viable goal for her." AR 1258.

6 The ALJ rejected Dr. Wheeler's opinion, finding the severe limitations inconsistent with  
7 Plaintiff's daily activities and with Plaintiff's "responses to treatment." AR 214–15. The ALJ  
8 also found Dr. Wheeler "offer[ed] no objective support" for her opinion, and that the medical  
9 record "did not usually indicate [Plaintiff] was sobbing, deeply dysphoric, or presenting with a  
10 'friable' affect." *Id.* This decision was not supported by substantial evidence.<sup>1</sup>

11 First, Dr. Wheeler's opinion is consistent with Plaintiff's daily activities. Regarding  
12 Plaintiff's mental impairments, the ALJ noted that Plaintiff "shops in stores and by computer for  
13 groceries, clothing, and household items. She regularly goes to [the] drug store, therapy center,  
14 and Walmart. She reads and creates art. She even explored going back to school." AR 208. The  
15 ALJ failed to consider Plaintiff's activities as she performed them, including that she requires  
16 frequent rest and often fails to complete basic chores or maintain appropriate hygiene. *See* AR  
17 781 (Plaintiff goes days without showering, takes frequent breaks from chores, and can only  
18 paint for up to one hour total each day); AR 1357 (Plaintiff's chore list "just keeps adding up and  
19 nothing gets done because it's too overwhelming"); AR 1900 ("Client reports putting off taking a  
20 shower and cleaning her house"); AR 1873 ("Cleaning is overwhelming for her. 'My best friend  
21 had to come clean for me because I just couldn't do it'"); AR 1878 (reporting several missed  
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23 <sup>1</sup> The ALJ also rejected Dr. Wheeler's opinion because it relied upon "programmatic language, which makes [it]  
24 inherently neither valuable nor persuasive." AR 214. Because the Commissioner concedes that this was not a valid  
reason to reject the opinion, the Court need not address it here. Dkt. 23 at 9.

1 therapy appointments due to forgetfulness and high anxiety). When considering these activities  
2 as Plaintiff performed them, they do not contradict Dr. Wheeler’s assigned limitations. *See*  
3 *Alexander M. v. Commissioner of Social Security*, No. C21-254-BAT, 2021 WL 3758145, at \*3  
4 (W.D. Wash. Aug. 25, 2021) (“There is no indication in the record Plaintiff engaged in any of  
5 these activities at a frequency or degree contradicting Dr. Bartels’ opinions.”).

6 Second, while impairments that can be controlled with medication are not disabling,  
7 *Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006), the record does not  
8 show that Plaintiff’s mental impairments were ever controlled by medication and therapy.  
9 Plaintiff consistently endorsed severe mental health symptoms, including during appointments  
10 where she acknowledged her treatment was somewhat helpful. *See* AR 1166 (“Lamictal and  
11 sertraline helpful but she has felt very overwhelmed recently and tearful”); AR 1870 (Plaintiff  
12 “doing better at remembering to take meds and feed the animals” but feeling more depressed,  
13 binge eating, and struggling with “low self-esteem and self-hatred”); AR 1885, 1892 (despite  
14 finding Topamax helpful with reducing binge eating, Plaintiff presented as anxious, depressed,  
15 and tearful, and reported high anxiety levels). Although Plaintiff reported improvement during  
16 several appointments in late 2020, *see* AR 1297–1311, the ALJ failed to explain how this brief  
17 success exemplified “true discrepancies” with Dr. Wheeler’s opinion, “rather than the ebb and  
18 flow of the claimant’s mental impairments.” *Caceres v. Colvin*, No. 3:14-CV-05908-DWC, 2015  
19 WL 4040727, at \*7 (W.D. Wash. July 1, 2015).

20 Third, Dr. Wheeler’s opinion contained sufficient objective support. An ALJ may  
21 discount a medical opinion if it is heavily based on discredited self-reports and not clinical  
22 evidence. *See Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). Here, however, Dr.  
23 Wingate properly relied both “on the patient’s self-report, as well as on [her] observations of the  
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patient.” *See Tara B. v. Comm’r of Soc. Sec.*, No. C21-0332-SKV, 2023 WL 4946573, at \*3 (W.D. Wash. Aug. 3, 2023) (citing *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017)). The ALJ himself acknowledged that Plaintiff was sobbing, deeply dysphoric, and had a friable affect during her appointment with Dr. Wheeler, but found these observations contradicted the medical record, which “did not usually indicate” she was in such a state. AR 214–15. A review of the record, however, reveals that Plaintiff appeared in a similar state at many other appointments. *See, e.g.*, AR 1898 (sobbing, labile, dysregulated); AR 1890 (distraught, labile, dysregulated); AR 1364 (“tearful and very dysregulated”); AR 1159, 1581, 1663, 1890 (tearful). Even in appointments where she appeared more stable, she endorsed frequent crying. AR 1535, 1541, 1547, 1565, 1571, 1575, 1579, 1594, 1596, 1598. Thus, Dr. Wheeler adequately supported her conclusions with observations of Plaintiff, and these observations do not contradict the medical record.

## **2. The July 2021 Opinion of Gytha Nydam, MHC**

Plaintiff’s mental health counselor, Ms. Nydam, Provided on opinion on July 19, 2021, in which she opined that Plaintiff “experiences extreme distractibility, memory deficits, and debilitating mood swings that preclude the client from maintaining employment.” AR 1372. Plaintiff contests the ALJ’s rejection of this opinion, which was based on similar grounds as his rejection of Dr. Wheeler’s opinion. Dkt. 14 at 10; Dkt. 19 at 8–9; AR 215.

The Court has reviewed Plaintiff’s arguments but declines to reach them as the Court has already determined that remand is necessary, and Plaintiff’s RFC must be reevaluated for the reasons given above. *See Social Security Ruling 96-8p*, (an RFC “must always consider and address medical source opinions”); *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009) (“an RFC that fails to take into account a claimant’s limitations is defective”).

1 **B. Plaintiff's Testimony**

2 Plaintiff also argues that the ALJ erred by discrediting her hearing testimony. Dkt. 14 at  
3 4–9. Again, because reconsideration of the medical opinion evidence may impact the ALJ's  
4 assessment of Plaintiff's credibility, the ALJ is further directed to reconsider this evidence on  
5 remand.

6 **IV. CONCLUSION**

7 Based on these reasons and the relevant record, the Court **ORDERS** that this matter be  
8 **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) to the  
9 Commissioner for further consideration consistent with this Order. The Clerk is directed to enter  
10 judgment for Plaintiff and close the case.

11 Dated this 2nd day of April, 2024.

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13 A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid horizontal line.

14 Grady J. Leupold  
15 United States Magistrate Judge  
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